

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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INDIANAPOLIS, INDIANA 46204-2764

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FILED

**IN THE MATTER OF THE PETITION OF THE CITY)
OF PERU, INDIANA BY ITS MUNICIPALLY)
OWNED ELECTRIC UTILITY FOR A CHANGE IN)
PERU'S ASSIGNED SERVICE AREA BOUNDARIES)
ON U.S.G.S. FACET P-9 TO INCORPORATE AN)
ANNEXED AREA PURSUANT TO IC 8-1-2.3-6(1))**

**RESPONDENT: MIAMI-CASS COUNTY RURAL)
ELECTRIC MEMBERSHIP COOPERATIVE, INC.)**

IAN 21 2004
INDIANA UTILITY
REGULATORY COMMISSION
CAUSE NO. 42727

You are hereby notified that on this date the Presiding Officer in this Cause makes the following Entry:

On September 27, 2004, the City of Peru, Indiana ("City") by its municipally owned electric utility ("Petitioner") filed its Verified Petition and a certified copy of an annexation ordinance with the Indiana Utility Regulatory Commission ("Commission") in this Cause seeking a change in its assigned electric service area boundaries pursuant to I.C. 8-1-2.3-6(1). The requested boundary change would incorporate a portion of an area annexed into the City that is currently within the assigned service area of the Miami-Cass County Rural Electric Membership Cooperative, Inc.

The Petition states that the City's annexation ordinance relevant to this Cause (Ordinance No. 27, 2003) was not published following its adoption and that said lack of publication raises an issue as to the effectiveness of the ordinance. The Petition also notes that the City is in the process of adopting a second annexation ordinance which will be published in accordance with I.C. 36-4-3-7, and that a certified copy of this second ordinance will be late-filed with the Commission. While not entirely clear, it appears Petitioner may be requesting that the Commission proceed to issue an Order approving the boundary change prior to an annexation ordinance becoming effective. The following language from the Petition suggests this position:

Ordinance No. 27, 2003 was not published following its adoption. The fact that the Ordinance was not published in accordance with the law raises an issue with respect to the effectiveness of the Ordinance. However, Indiana law also provides that "a certified copy of the annexation ordinance . . . serves as conclusive evidence that the area has been lawfully annexed and is part of the municipally [municipality]." I.C. 8-1-2.3-6(1); I.C. 36-4-3-6. There has not been any remonstrance of the annexation Ordinance and the City is treating the annexed area as a part of the City.

I.C. 8-1-2.3-6(1) also states: "The municipally owned electric utility shall file its petition with the commission not later than sixty (60) days after the annexation becomes effective."

While I.C. 8-1-2.3-6(1) does not prohibit the filing of a petition and a certified copy of the relevant annexation ordinance prior to the annexation becoming effective, it is consistent with this statute to require that the record of evidence shows the annexation to be effective at the time the Commission orders a boundary change.

Having considered the application of I.C. 8-1-2.3-6(1) to the Verified Petition, the Presiding Officer finds that before the Commission should grant the relief sought in this Cause, the record should include (1) a certified copy of the relevant annexation ordinance which has a known date of effectiveness and (2) evidence of the date when the annexation ordinance became, or will become, effective. The Commission should not issue an Order approving the requested boundary change prior to the effective date of the annexation ordinance.

This Entry is provided for clarification purposes, since, as noted above, it is not clear that Petitioner is requesting the Commission to issue an Order inconsistent with the findings of this Entry.

IT IS SO ORDERED.

William A. Divine
William G. Divine, Administrative Law Judge

1-21-05
Date